IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NOS. 416 OF 1993 AND 465 OF 1996.

WRIT PETITION NO. 416 OF 1993.

(1) Alcon Resort Holdings Limited, a company registered under the Companies Act, 1956, having its registered office at Velho Building, Panaji, Goa.
(2) Shri Victor M. Albuquerque, Director, Alcon Resort Holdings Pvt. Ltd., Velho Building, Panaji, Goa. ... Petitioners.

Versus

(1) The Dy. Collector & Sub-Divisional Officer, South Goa, Margao, Goa.
(2) The Under Secretary (Urban Development), Government of Goa, Secretariat, Panaji, Goa.
(3) The Dy. Collector & Sub-Divisional Officer, Panaji, Goa.
(4) The State of Goa, through its Secretary (Urban Development), Secretariat, Panaji, Goa. ... Respondents.

Mr. M.S. Sonak with Mr. D. Pangam and Miss P. Bharne, Advocates for the Petitioners.

Mr. V.P. Thali, Addl. Advocate General with Miss S. Linhares, Addl. Govt. Advocate for the Respondents.

WRIT PETITION NO. 465 OF 1996.

(1) Mrs. Angela Pereira de Andrade Rebello, r/at Mangor Hill, Vasco da Gama.
(2) Mr. Francisco Xavier Rosario Gerson Rebello, r/at Mangor Hill, Vasco da Gama. ... Petitioners.

Versus

(1) State of Goa through Chief Secretary, Govt. of Goa, having office at Secretariat, Panaji, Goa.

(2) Sub-Divisional Officer and
Deputy Collector, South
Goa, Margao, Goa.
(3) District Magistrate and
Collector, South Goa District,
Collectorate, Margao, Goa. ... Respondents.

Mr. M.S. Sonak with Mr. D. Pangam and Miss P. Bharne, Advocates for the Petitioners.

Mr. V.P. Thali, Addl. Advocate General with Mr. H.R. Bharne, Government Advocate for the Respondents.

Coram: S. RADHAKRISHNAN &
P.V. HARDAS, JJ.

Date: 14th August 2002.

ORAL JUDGMENT (PER RADHAKRISHNAN, J.)

In both the above petitions the basic challenge is with regard to levy of conversion fee under Section 32 of the Goa, Daman and Diu Land Revenue Code, 1968. The learned counsel for the petitioners has basically challenged the levy of conversion fee on three grounds (a) the said conversion fee is totally arbitrary, irrational and discriminatory and, therefore, violative of Article 14 of the Constitution of India, (b) the aforesaid levy though is termed as 'fee', the State construed the same to be a 'tax', that is to say a fee is levied in the guise of tax without rendering any service and (c) the State has no legislative competence to collect the aforesaid conversion fee by way of tax as the same was not permissible under Entry 45 or 49 of the concurrent list of the VIIth Schedule of the Constitution of India, that is to say, that the State lacks legislative

competence to levy this tax.

2. In the above matters we have heard the learned counsel only on the first issue, that is, whether the levy of the said conversion fee is totally discriminatory in the sense the same is irrational, arbitrary and violative of Article 14 of the Constitution of India. Since we are clearly of the view that the aforesaid levy is patently discriminatory, irrational and violative of Article 14 of the Constitution of India, we are not deciding the other two issues, which are referred to hereinabove as (b) and (c), are expressly kept open.

3. The brief facts are that the predecessors-in-title of Alcon Resort Holdings Limited had applied to the Deputy Collector and Sub-Divisional Officer on 26th September 1988 for conversion of an area of 73,650 square metres from agricultural use to non-agricultural use under Section 32 of the Land Revenue Code. At the time when the aforesaid application was made, there was no provision for any conversion fee under Section 32. The petitioners had obtained the necessary approval from the Planning Authorities and by the letter dated 4th November 1988, the petitioners informed the Deputy Collector that they

had obtained the requisite approval from all the Authorities and, therefore, sought the expeditious grant of Conversion Certificate/Sanad pursuant to their application dated 26th September 1988.

4. On 28th November 1988 the Goa Land Revenue Code (Amendment) Act, 1988 was brought into force whereby Section 32(6) of the Land Revenue Code, 1968 was amended. The said Section 32(6) as unamended reads as under:-

> "32(6) When the land is permitted to be used for a non-agricultural purpose, a sanad shall be granted to the holder thereof in the form prescribed under the rules."

After the said amendment, the said Section 32(6) now reads as under:-

> "32(6) When the land is permitted to be used for a non-agricultural purpose, a sanad shall be granted to the holder thereof in the form prescribed under the rules on payment of the fees at the rates mentioned as under:-
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> | | | |
> |---|---|---|
> | (i) | on personal housing | Rs. 2/- per sq. metre. |
> | (ii) | on commercial housing/ industrial and commercial constructions. | Rs. 5/- per sq. metre. |
>
> Provided that no such fees shall be leviable in cases where sanad is granted --

(i) for area not exceeding two hundred square metres;

(ii) for the purpose of churches, temples, mosques, gurudwaras, sports, hospitals, or educational, charitable, cultural or religious institutions."

Therefore, from the above amendment it is clear that as far as conversion of agricultural land to non-agricultural use for personal housing is concerned, the conversion fee was prescribed as Rs. 2/- per square metre and as far as conversion of agricultural land for commercial housing/industrial and commercial constructions is concerned, the same was provided at Rs. 5/- per square metre.

5. Ultimately the State Government granted approval for conversion of land on 16th January 1989 and the actual conversion sanad was issued on 20th February 1989. Thereupon, for the first time, the respondents made a demand from the petitioners, by a letter dated 20th July 1989, demanding a sum of Rs. 3,68,250/- at the rate of Rs. 5/- per square metre being the conversion fee. This demand was disputed by the petitioners and various correspondence was exchanged between the parties and finally a demand notice was served on the petitioners dated 13th April 1993, which demand has been impugned in the above Writ Petition No. 416 of 1993.

6. As far as this petition is concerned, the actual area which has been converted wherein construction is permissible, out of the 73,650 square metres, is only 18,425 square metres, that is to say, the maximum land permissible to be utilised for non-agricultural purpose is 18,425 square metres, out of which, in fact, the petitioners in reality actually utilised 10,000 square metres for such construction.

7. As far as the second petition, that is Writ Petition No. 465 of 1996 is concerned, the challenge is with regard to the rate for commercial housing/industrial and commercial construction which was increased from Rs. 5/- in the year 1988 to Rs. 15/- in the year 1994. Therefore, in both the above petitions the basic challenge that the conversion fee initially which was Rs. 5/- for commercial construction and from the year 1994 was increased to the rate of Rs. 15/- is on the ground that the said levy is totally arbitrary, irrational and discriminatory in the sense the aforesaid conversion fee rate of Rs. 5/- or Rs. 15/-, as the case may be, is applicable to the entire State of Goa uniformly irrespective of the fact whether the plot is situated in a developed City like Panaji or a town or in an absolute rural and village area. To put it in other words, the conversion fee at Rs. 5/- or Rs. 15/- is

being levied uniformly for commercial use all throughout the State of Goa in 1988 and 1994 onwards respectively. As far as conversion of non-agricultural plot into residential use is concerned, the conversion fee at Rs. 2/- per square metre was provided in the 1988 Amendment but in the 1994 Amendment there was no change with regard to private residential use. The learned counsel for the petitioners strongly contended that the aforesaid levy has not taken into account any rational circumstances or factors and, therefore, submitted that unequals are being treated as equals, thereby the same is violative of Article 14 of the Constitution of India. To put it in other words, the learned counsel for the petitioners submitted that as far as the land in a totally rural and village area is concerned, if the same were to be converted for the purpose of commercial use today, the person has to pay Rs. 15/- per square metre and in a developed City like Panaji also, the person has to pay the same Rs. 15/- per square metre. Even in the City of Panaji there are certain areas having better amenities and certain areas are congested. Even there, there is no distinction made. To put it in other words, the entire State of Goa is treated on the same basis and the levy of Rs. 15/- per square metre is made by way of conversion fee for changing agricultural land to commercial use, which has no rational basis at all and the same has to be

struck down by this Court as clearly violative of Article 14 of the Constitution of India.

8. The learned counsel for the petitioners in that behalf referred to various Judgments starting with a Judgment of the Hon'ble Apex Court in **New Manek Chowk Spg. and Wvg. Mills Co. Ltd., etc. v. Municipal Corporation of the City of Ahmedabad and others,** A.I.R. 1967 S.C. 1801 wherein an almost similar issue had cropped up and the Apex Court dealing with the same has observed as under:-

> "(10) There is nothing in the counter affidavit to show that conditions in the City of Ahmedabad with regard to textile mills are such as would make the method laid down at p. 164 of Faraday's book applicable. The affidavit does not purport to show that the factories were constructed at or about the same time or in groups or were so similar in their operation that their rental value could be determined at per foot super of floor area applying the contractor's basis. There is nothing to show that any textile factory was valued on the contractor's basis and that from the figures of valuation so worked out, the rental value per foot super of floor area was determined. On the other hand, the affidavit suggests that because in various cities it was common to let out premises on the basis of floor area, the municipal authorities of Ahmedabad had resorted to this method for fixing the rateable value. We can take judicial notice of the fact that sometimes godowns or buildings constructed for office purposes are let out on the basis of

floor area; but even then, the rate would vary according to the nature of the building and according to the site of the building in the city. It would also depend upon the age of the building and the amenities provided therein. It would be impossible to say that in the City of Ahmedabad a tenant would be willing to pay at the same rate of rent for factory accommodation, no matter where the building was situate or when it was put up or how it was constructed.

(11) Our attention was also drawn to other well known books on Rating like Ryde on Rating, Bean and Lockwood on Rating and Graham Lyre on Rating. Incidentally, we may refer to Witton Booth on Valuations for Rating (Fourth Edition) at p. 125 wherein the learned author states:

"Reductions of floor areas to units, as already described, are necessary to effect reliable comparisons, but it is merely a mechanical process used in preparing material for the valuation, the actual valuation being the decision and application of the appropriate rate or rental value per unit of area. This may be exactly to a standard, and, indeed, it probably will be to the majority of properties where these are so nearly alike in character as to be regarded for rating purposes as identical. Where, however, rates or rental values per unit of area are applied indiscriminately, without discernment -- on the wholesale, as it were -- inequalities are certain to arise, and these give rise to the whole method being caustically referred to as "valuations by the foot rule"".

(12) The above comment is sufficient to show that this method can only be applied where the majority of properties are so nearly alike in character as to be regarded identical for rating purposes.

There is no such statement in the affidavit.

(13) We are, therefore, not satisfied that conditions prerequisite for determination of annual value of textile factories in Ahmedabad on the basis of rental value per foot super of floor area existed at the relevant time nor has it been shown to us that the so-called contractor's basis was adopted by the municipal authorities of Ahmedabad. The method is not also one which is generally recognised by authorities on rating. Applied indiscriminately -- as it appears to have been done in this case -- it is sure to give rise to inequalities, as there has been no classification of the factories on any rational basis. Further, there does not seem to be any basis for dividing the factories and the buildings thereof under two general classes as buildings used for processing and buildings for non-processing purposes. What was said by this Court in Lokmanya Mills' case, 1962-1 SCR 306=(AIR 1961 SC 1358) (Supra) applies with equal force to what has been done here and we must hold that the municipality did not observe the law and failed in its duty to determine the rateable value of each building and land comprised in each of the textile factories in terms of R. 9(b) of the rules under the Bombay Provincial Municipal Corporations Act, 1949 so far as the assessment book for the year 1966-67 is concerned.

(14) Mr. Setalvad argued that at that stage there is only a proposal and even if the municipality had acted arbitrarily it was open to the assessees to take objection thereto and have proper valuations made and the assessment book prepared properly. We cannot accept this argument. If the municipality fails in its initial duty to act in terms of R. 9(b) it does not lie in its mouth to say that any irregularity,

> however, patent on the face of it, is open to correction. Moreover, the methods of correction in this regard are really illusory. The Small Causes Court cannot decide the applicability of Art. 14 of the Constitution and according to the Judgment of the Bombay High Court in Balkrishna v. Poona Municipal Corporation (1963) 65 Bom. L.R. 119, (by which the District Judge would be bound):
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> "..... the words used in S. 406(1) of the Act ..... do not cover the vires of the tax or the legality of the tax which is sought to be levied."
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> Earlier, the learned Judges had pointed out after noting Ss. 406 to 413 that:
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> "the decision of Judge aforesaid upon any appeal against any such value or tax if no appeal is made therefrom under S. 411 and if such appeal is made the decision of the District Court in such appeal shall be final."
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> From this it follows that it would be useless for the assessee to take objections or file appeals against the decisions on rateable value to the authorities prescribed by the Act if he was challenging the determination of the rateable value as being violative of Art. 14 of the Constitution. It is no answer to such a charge to say that the rateable value could be determined properly by the municipal authorities acting under the Act and the rules thereunder when they do not resort to any of the well-known methods of valuation and cannot justify their arbitrary method."

Finally the Apex Court found that the aforesaid levy to be totally irrational and as such violative of Article 14 of the Constitution of India.

9. Thereafter the learned counsel for the petitioners also referred to a Division Bench Judgment of our High Court in **Rajab Mahal Co-operative housing Society Ltd. v. State of Maharashtra and others,** A.I.R. 1980 Bombay 358. In this case also on a similar set of facts and circumstances our High Court found that the levy of uniform tax was totally irrational and violative of Article 14 of the Constitution of India. In that behalf it may be relevant to note the observation in paragraph 21 of the aforesaid Judgment, which reads as follows:-

> " Our attention was drawn to the statement of objects and reasons as also the preamble of the Act to indicate the object of this Act. Both read together merely suggest that in addition to the property tax based upon rateable value collected under the municipal tax, the State Government wanted to augment its own income and, therefore, additional property tax was being levied on the basis of the floor area, as indicated earlier. There is, therefore, no doubt that this measure was introduced under the powers vested in the Maharashtra Legislature by Entry 49 of List II of VII Sch. of the Constitution. It is essentially a property tax. This distinction, as pointed out above, does not make the Maharashtra Act a piece of legislation any distinct from the Kerala Act, which was already struck down as unconstitutional. It may be that the area of operation of the present Act is limited to Corporation areas and that the premises which are chosen for imposing the tax are residential premises, as defined in Cl. (o) of S.2 of the Act. This

Act on a bare perusal and on the face of it refuses to make any distinction between different areas of the same town and the degree of development which may be different in different localities under the same Municipal administration. In fact, in the arguments addressed to us even references were made to the so-called post locality of the Fort areas and the Malabar Hill and the backward areas which still surround the suburbs, and also the erstwhile villages which have all become the Municipal Corporation area of Greater Bombay by virtue of the extension of the area of the Corporation by Government from time to time. Obviously, therefore, all areas are not equally developed and the fact that only a few towns are comprised within the operation of the Act does not distinguish this Act from the Kerala piece of legislation. The essence of the criticism of the Supreme Court so far as the Kerala Act was concerned, was not that it operated in a large field comprising the whole State, but the vice was that the Act operated uniformly to all areas which can be so dissimilar and can have no comparison to one another. That fact is still available for being argued in respect of the towns for which the present Act operates. With the growth of towns when Corporations are required to be set up for better administration, the State Government has always issued notifications describing the limits of the Corporations. Judicial notice can be taken of all these notifications which include several surrounding villages which are automatically made part of the Corporation areas. It is common knowledge that the newly added areas do not at once improve and come to the standard or level of improvement as in the posh locality or localities in certain areas. Then again the material used, the nature of structure, the cost of construction and the capacity to yield income vary immensely. They

> are not found to be equal, not only from locality to locality but in certain circumstances from building to building. This being the reality of life, any piece of legislation which forgets this factual aspect and seeks to equalise by mere legislative direction unequal buildings are bound to suffer from the vice indicated by the Supreme Court in the State of Kerala case."

10. In the above Judgment our High Court had found that unequals were being treated equally and the authority had not taken the reality into account and had blindly treated everyone alike. In the aforesaid Judgment of our High Court the Division Bench has also referred to the earlier Judgment of the Apex Court in **New Manek Chowk Spinning and Weaving Mills Co. Ltd. v. Municipal Corporation of the City of Ahmedabad.** Ultimately in paragraph 32 in the above Division Bench Judgment of our High Court it is observed as under:-

> " These are all the arguments addressed to us, and the Judgments cited on either side. We have hardly any doubt that there is no rational classification at all in the impugned Act so far as the different flats are concerned. Merely to say that all flats with floor areas of more than 125 square meters are selected for taxation is not to make a classification at all, much less a rational classification. Not only all buildings are not similar but in an old established town there are bound to be buildings constructed at various times, the materials used in such construction are also changing from time to time. In Bombay, for instance, there would be some buildings almost a hundred years old when reinforced concrete was not known at all. We have

> already enumerated several factors which make two flats of identical floorage entirely different from each other. There is no need to reiterate the same factors. If, therefore, this Act seeks to treat unequals as equals and imposes a uniform or flat tax irrespective of the various rational considerations which ought to enter a tax structure, the Act and the tax obviously offend the provisions of Art. 14. We may state again that there was a second leg to the argument of Mr. Seervai challenging the legislative competence of the State Government in imposing the impugned tax. If the tax is a property tax, he had also asserted that the impugned Act offends Art. 19 as well. Since we find that the challenge under Art. 14 is insurmountable and that part of the petitioners' challenge is already covered by the decision of the Supreme Court, it is not necessary to consider the other points raised in the petition. We accordingly leave those points expressly open."

Our High Court in the above Judgment also took the view that the Act seeks to treat unequals as equals and imposes a uniform or flat tax irrespective of the various rational considerations which ought to have been considered in a tax structure, the same was not done, hence, offending the provisions of Article 14 of the Constitution of India.

11. The learned counsel for the petitioners also brought to our notice a similar state of affairs in a Division Bench Judgment of the Kerala High Court in **The State of Kerala, represented by the Chief Secretary to Govt., Trivandrum and others v. Haji K. Haji K.**

Kunhippokker Kutty Naha. and others, A.I.R. 1967 Kerala 114 wherein in paragraph 16 the Division Bench of the Kerala High Court has observed as under:-

> " The classification on the basis of floorage adopted in the Act is not founded on any intelligible differentia. An intelligible differentia in a case like this will have to be based not merely on floorage but also on value or income. A classification in a taxing statute is intended to equalise, as far as possible, the burden of taxation. And the burden of a buildings tax can never be equalised when it is based solely on floorage and ignores all the other relevant considerations."

12. Finally the learned counsel for the petitioners also referred to and relied on another Division Bench Judgment of our High Court in **The Lokamanya Mills Barsi Limited, Barsi v. Barsi Municipal Council, Barsi and another,** A.I.R. 1968 Bombay 229 wherein in paragraphs 16 and 17 the Division Bench has observed as under:-

> "16. Reverting to the main argument advanced by Mr. Sorabjee, we are inclined to hold that the impugned provisions are discriminatory and violative of Article 14 of the Constitution on both the grounds urged by him. We will first deal with the first ground, viz., that the impugned provisions lead to inequality because they permit the imposition of a tax assessed at a uniform rate on the floor area of buildings and lands without reference to their actual value. Many authorities were cited before

us from both sides on this part of Mr. Sorabjee's argument, and we shall presently examine them. Their effect, however, may be summarised at this stage. It seems to be well established that a statutory provision may be struck down as discriminatory if it treats unequal objects or persons as if they were equal and subjects them to the same burden or liability. This principle, however, has a number of qualifications. In the first place, the differences between the objects or persons which are treated in a uniform manner by statutory provision may be irrelevant from the point of view of the object which was intended by the Legislature to be achieved by enacting the provision. If equal treatment of unequal objects or persons is consistent with the object of the Legislature, the provision will not be held to be discriminatory, unless of course, the object of the Legislature was itself discriminatory. Secondly, most statutes are intended to apply to wide categories of persons or objects or situations, and it is not expected that the Legislature shall make meticulous adjustments in order to establish equality between the various objects, persons or situations dealt with by the statute. A statutory provision would be held to be discriminatory only where the equal treatment given by it to unequal subjects leads to patent discrimination. Thirdly, the above precaution has relatively greater relevance in taxing statutes, for the taxing powers of the Legislature are understood to be wide and comprehensive. A taxing statute, however, must conform to the requirement of equality before the law guaranteed by the Constitution and would be struck down if the equal treatment given by it to unequal objects and persons leads to patent discrimination.

17. We have taken into consideration the above principle

with all its qualifications in coming to the conclusion that the impugned provisions are violative of Article 14 of the Constitution. The object of the impugned provisions, we assume, was to lay down an equitable method for the assessment of lands and buildings for the purpose of a property tax. The fact that lands and buildings of the same floor area have widely different values is clearly not irrelevant to that legislative object. If, on the other hand, the object of the Legislature in passing the impugned provisions was merely to validate the taxes already imposed by certain municipalities on the basis of the floor area of buildings and lands, the object itself must be held to be discriminatory if the taxes operated with patent inequality as between the owners of different factories and mills. We are further of the view, after giving due weight to the fact that the powers of the legislature in matter of taxation are wide and comprehensive that the impugned provisions permit and authorise the creation of gross inequality leading to patent discrimination. In every town the value of a land in one locality is several times the value of another land of equal extent in another locality. The value of buildings depends partly on the land on which they are constructed and partly on their age, the mode of their construction, the material used and so forth. The value of the buildings of a textile mill is bound to be very different from the value of the buildings of a ginning factory or a Dal mill or a flour mill having the same floor area. Similarly the value of the buildings of an old textile mill will be materially different from the value of the buildings of a new textile mill having the same floor area. The disparity will be found to be all the greater if it is borne in mind that the word "building" has been given a very wide meaning in the Boroughs Act. Section 3(2) of

the Boroughs Act says that the word "building" shall "include any hut, shed or other enclosure, whether used as a human dwelling or for any other purpose and shall also include walls (including compound walls and fencing). Verandahs, fixed platforms, plinths, doorsteps and the like." Under this definition a fixed platform having a very shallow foundation and no walls or roof is as much a building as a solid structure erected on a proper foundation and provided with walls and a roof. An instance of such a platform being assessed as a building on the basis of its floor area is before us in First Appeal No. 2 of 1965 in which the respondents are the owners of a Dal mill situated in Jalgaon. It is well known that a Dal Mill requires wide open platforms for the purpose of drying Dal prepared from pulses. It is not possible that the value per square yard of a platform constructed by a Dal mill will be anywhere near the value per square yard of, say, the office premises of a textile mill. Moreover, the word 'factory' is not defined in the impugned provisions, and it is apparently left to the municipalities to define the word as they think fit. We find that in the rules made by the Jalgaon Municipality the word 'factory' has been defined to mean any premises wherein or within the precincts of which steam, water or other mechanical power or electrical power is used in aid of any process for, or incidental to making, altering, repairing, ornamenting, finishing or otherwise adapting for use, for transport or for sale any article or part of an article. According to this definition, a flour mill operated by the owner himself or members of his family is also a factory. When the word factory is so widely defined, the values of the buildings of different factories are bound to be widely divergent. We are accordingly of the view that the impugned provisions are patently

discriminatory."

13. Under these circumstances, the learned counsel for the petitioners contended that the impugned conversion fee at Rs. 5/- in the year 1988, which was increased to Rs. 15/- in the year 1994, has been applied uniformly in the entire State of Goa without taking into account any of the rational factors and circumstances. The learned counsel for the petitioners, therefore, submits that in a given case, in fact a particular property in a remote village in the State of Goa wherein a person wants to use it for commercial purpose will have to pay the conversion fee of Rs. 15/- whereas the land cost itself may be less than Rs. 15/- per square metre. To put it in other words, the conversion fee will be much more than the cost of the land. Therefore, the learned counsel submitted that it will be highly unjust and unfair to have a uniform rate. In any event, according to the learned counsel, the irrational and arbitrariness is writ large on the face of it. The learned counsel for the petitioners submits that at least some classification ought to have been done with the aforesaid levy and not in a blind manner levied at a uniform rate which cannot stand the test of reasonableness under Article 14 of the Constitution of India. Under these circumstances the learned counsel for the petitioners has prayed that Section 32(6)(ii) of the Goa Land Revenue Code which deals with the

uniform fee for conversion of agricultural land into commercial use be struck down as null and void and violative of Article 14 of the Constitution of India. In view thereof the learned counsel also prays that the impugned demand also ought to be quashed and set aside as the very demand is based on a provision which is violative of Article 14 of the Constitution of India.

14. The learned Additional Advocate General Mr. Thali appearing on behalf of the respondents strongly contended that merely because a uniform levy is made does not mean that the same is violative of Article 14 of the Constitution of India and the State is empowered to levy such a tax and this Court ought not to interfere with the same.

15. Mr. Thali, the learned Additional Advocate General submitted that in fact in this case the respondent State has adopted a uniform policy and has treated everyone equally and, therefore, it is in consonance with Article 14 and as such this Court ought not to strike it down. In that behalf Mr. Thali, the learned Additional Advocate General appearing for the respondents has brought to our notice a Judgment of the Apex Court in **State of Mysore and others v. M.L. Nagade and Gadag and others**, (1983) 3 S.C.C. 253.

16. In the above Judgment in paragraph 6 the Apex Court has clearly observed that as far as the Hyderabad Land Revenue Rules were concerned, there was a geographical classification and population as a criteria was also taken into account for the purpose of classification. Whereas in the instant case no such criteria was adopted, that is, neither geographical factor nor population was taken into account when the aforesaid levy was provided by way of conversion fee. Hence, the above Judgment will be of no assistance to the respondents.

17. The learned Additional Advocate General for the respondents referred to another Judgment of the Apex Court in **M/s. Murthy Match Works and others v. The Asstt. Collector of Central Excise and another,** (1974) 4 S.C.C. 428. In this case, in fact the Apex Court in paragraph 16 has observed as under:-

> " One facet of the equal protection clause, upheld by the Indian Courts and relevant to the present case, is that while similar things must be treated similarly, dissimilar things should not be treated similarly. There can be hostile discrimination while maintaining a facade of equality. Procrustean cruelty cannot be equated with guarantee of constitutional equality, and we have to examine whether such is the lot of the appellants."

From the above it is clear that there can be a hostile

discrimination while maintaining a partial equality, that is to say, similar things must be treated similar and dissimilar things should not be treated similar as pointed out by the Apex Court. Even the above Judgment will be of no assistance to the respondents.

18. Thereafter the learned Additional Advocate General appearing for the respondents referred to another Judgment in **Spences Hotel Pvt. Ltd. and another v. State of West Bengal and others,** (1991) 2 S.C.C. 154.

19. In the above Judgment the Apex Court was concerned with the levy of luxury tax in hotels with air-conditioning. The argument was that there are smaller hotels and bigger air-conditioned hotels and, therefore, there was discrimination. The Apex Court held that the luxury tax is uniform and equal to all persons belonging to the described class, namely, owners of all luxury hotels and restaurants having air-conditioning. This tax was levied on a particular class of hotels, that is to say, all air-conditioned hotels irrespective of the size, the standard, facilities etc.. The Apex Court was of the view that as the tax was on a separate class itself, there was no need of a further sub-classification and merely because there was no sub-classification, would not render the

same bad in law. The levy in the instant case cannot be treated as a classified levy. The levy is uniform whether it be a poor farmer in the village or a rich person in a City like Panaji. Therefore, the above Judgment will be of no use to the respondents.

20. The learned Additional Advocate General for the respondents also referred to another Judgment of the Apex Court in **State of Assam and others v. Naresh Chandra Ghose (D) by LRs.,** (2001) 1 S.C.C. 265 wherein the levy was based on a certain percentage of alcohol, that is to say, volume of alcohol was less than 12% and in certain cases it was more than 12%, wherein the Apex Court found that the classification was based on the strength of alcohol contents in the medicinal preparations and the same cannot be construed to be arbitrary and violative of Article 14 of the Constitution of India whereas in the instant case there is no such classification at all. A uniform levy was made. Hence, the above Judgment will be of no assistance to the respondents.

21. The learned Additional Advocate General for the respondents then referred to another Judgment of the Apex Court in **Tata Iron & Steel Co. Ltd. & Ors. v. State of West Bengal & Ors.,** 2002 (4) Supreme 386. In paragraph 10 the Apex Court has held that the

classification of levy of tax with regard to buildings having more than five floors would not offend the doctrine of equality since there was a clear classification in the above that only buildings which have more than five floors would be taxed. As such the said classification was held to be not bad in law and not violative of Article 14 of the Constitution of India. The above Judgment will not be of any assistance to the respondents.

22. The learned Additional Advocate General also referred to another Judgment of the Apex Court in **Avinder Singh and others v. State of Punjab and others,** (1979) 1 S.C.C. 137 wherein levy was with regard to all foreign liquor irrespective of the quality. Foreign liquor was construed as a class by itself and nothing was found to be arbitrary. The said analogy would not apply to the facts and circumstances of the present case and the said Judgment will not be of any assistance to the respondents. Foreign liquor itself is a class and the levy was based on the flat rate irrespective of various brands under that category. The Apex Court in fact has observed that intoxicating liquids falling in the well-known category of foreign liquors form one class and a flat minimal rate of Re. 1/- per bottle has no constitutional stigma of inequality.

23. The learned Additional Advocate General referred to and relied on another Apex Court Judgment in **Raja Jagannath Baksh Singh v. State of Uttar Pradesh and another,** A.I.R. 1962 S.C. 1563. In paragraph 16 it is clearly mentioned that Legislature is competent to classify persons or properties into different categories and tax them differently and if the classification is thus made then it is rational. In the said paragraph it is observed that a taxing statute can be held to contravene Article 14. The above Judgment also will be of no assistance to the respondents inasmuch as in the instant case there is no classification.

24. Finally the learned Additional Advocate General referred to and relied on the Judgment of the Apex Court in **M/s. East India Tobacco Co., etc., v. State of Andhra Pradesh and another,** A.I.R. 1962 S.C. 1733 wherein the Apex Court found that State was entitled to treat Virginia tobacco as forming a separate class by itself compared to other country tobacco. There are two classes of tobacco and as such the Apex Court declined to interfere. Even the above Judgment will be of no assistance to the respondents.

25. Under the aforesaid facts and circumstances, after giving our deep consideration to all the

aforesaid Judgments cited, we find that the respondents have levied a uniform flat rate of Rs. 15/- per square metre by way of conversion fee for the entire State of Goa without taking into account any rational considerations whatsoever for imposing tax whereby unequals are treated as equals.

26. As has been pointed out by the Apex Court in **New Manek Chowk Spg. and Wvg. Mills Co. Ltd. v. Municipal Corporation of the City of Ahmedabad,** that the levy was based on a uniform basis cannot be sustained and that the levy ought to vary according to the nature of the building and the site of the building in the city. The Apex Court also has held that the levy would depend on the age of the building and the amenities provided therein. Hence, the Apex Court had held that it would be impossible to say that in the City of Ahmedabad a tenant would be willing to pay at the same rate of rent for factory accommodation, no matter where the building was situated or when it was put up or how it was constructed. To put it in other words that one cannot have equal rate for unequal buildings and sites. Hence the said levy was struck down by the Apex Court in no uncertain terms as violative of Article 14 of the Constitution of India.

27. On an almost similar fact and circumstance

our Division Bench in **Rajab Mahal Co-operative Housing Society Ltd. v. State of Maharashtra and others**, has clearly held after referring to various Apex Court Judgments that one locality from another locality is bound to differ and to have a uniform levy would be patently contrary to Article 14 of the Constitution of India. In fact in that behalf our High Court has observed as under:-

> "23. The principle that has been laid down by the Supreme Court is that there are various factors which always enter into consideration in any rational system of taxation of buildings, and unless a piece of legislation exhibits consonance with those recognised principles and factors and devises a method of calculating and levying tax on the basis of these recognised methods, it would be difficult to uphold the provisions of the Act."

Finally our Division Bench has held that the Maharashtra Act is nothing but a flat tax on the basis of floor area, ignoring all rational factors which must be taken into consideration in levying tax upon properties. It is not so much the form but pith and substance that must be examined, and the Division Bench did not find any difference between the Maharashtra Act and the Kerala Act, which was struck down in the well-known case of **K.T. Moopil Nair v. State of Kerala**, A.I.R. 1961 S.C. 552.

28. As pointed hereinabove, in the other Division Bench Judgment of our High Court in **The Lokamanya Mills Barsi Limited, Barsi v. Barsi Municipal Council, Barsi and another**, A.I.R. 1968 Bombay 229, the Division Bench has also taken unequivocally the same stand with regard to uniform levy mentioning that if the taxes operated with patent inequality as between the owners of different factories and mills then the same amounts to creation of gross inequality leading to patent discrimination.

29. As pointed out hereinabove, all the Judgments cited by the learned Additional Advocate General, there were classifications and, in fact, even in those Judgments the Apex Court has clearly held that unequals cannot be treated equally. In the light of the above Judgments of the Apex Court as well as of our High Court, we have no doubt whatsoever in our minds that the aforesaid provision in Section 32(6)(ii) wherein on a uniform basis conversion fee, which the State seeks to call as tax, is being levied at Rs. 5/- per square metre from the year 1988 and at Rs. 15/- per square metre from the year 1994 is patently violative of Article 14 of the Constitution of India and, accordingly, the same is liable to be quashed and struck down.

30. In the aforesaid facts and circumstances we pass the following Order:-

As far as Writ Petition No. 416 of 1993 is concerned, Rule is made absolute in terms of prayer Clauses (a) and (b) with costs. As far as Writ Petition No. 465 of 1996 is concerned, Rule is made absolute in terms of prayer Clauses (a) and (b) with costs.

31. The learned counsel for the petitioners states that as far as the first petition is concerned, the petitioners had already deposited a sum of Rs. 1,00,000/- at the time when the above petition was admitted and interim relief was granted on 6th September 1993. The petitioners seek leave to withdraw the same. The petitioners are allowed to withdraw the same inasmuch as, we have also struck down the aforesaid demand made under the Land Revenue Code. As far as the second petition is concerned, the petitioners had paid Rs. 1,89,525/- by way of conversion fee which also the learned counsel seeks refund from the respondents. In view of the fact that as we have already struck down the aforesaid provision of the Land Revenue Code as ultra vires Article 14 of the Constitution of India, the respondents are directed to refund to the petitioners the sum of Rs. 1,89,525/-

within a period of 8 weeks from today, as the said levy was unsustainable in law.

32. Rule is, accordingly, made absolute in both the petitions. It is made clear that the striking down of Section 32(6)(ii) of Land Revenue Code with regard to levy of conversion fee would be prospective in operation, in the sense that whatever action the respondents have already taken prior to this Order, will not be affected by this Order.

33. This is based on an American doctrine of prospective overruling. In our country, this doctrine was adopted for the first time in **I.C. Golak Nath and Ors. v. State of Punjab & Anrs**, 1967 (2) S.C.R. 762. The sum and substance of this innovative principle is that when the Court finds or lays down the correct law in the process of which the prevalent understanding of the law undergoes a change, the Court, on consideration of justice and fair deal, restricts the operation of the new found law to the future so that its impact does not fall on the past transactions, as has been recently held by the Apex Court in **Kailesh Chand Sharma etc. etc. v. State of Rajasthan & Ors.**, JT 2002 (5) SC 591.

34. The learned Additional Advocate General has

fairly stated that State of Goa is desirous of amending the aforesaid violative part of Section 32(6)(ii) of the Land Revenue Code so as not to be violative of Article 14 of the Constitution of India and in view thereof, the learned Additional Advocate General prays for stay of our Order for a period of 8 weeks from today.

35. In the aforesaid facts and circumstances and specially in view of the fact that the State of Goa is desirous of amending the Act, the Judgment passed today is stayed for a period of 8 weeks.

(S. RADHAKRISHNAN)
JUDGE.

(P.V. HARDAS)
JUDGE.

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